

REMARKS / ARGUMENTS

This is in response to the examiner's action mailed January 11, 2006.

The examiner has considered claims 13-34, the remainder of the claims having been withdrawn from further consideration. In a non-final action, the examiner has rejected claims 13-34 pursuant to 35 U.S.C. 103(a) as unpatentable over Gray, U.S. 2004/0185734 A1, in view of Tupin, U.S. 6,004,891 or Tupin in view of Gray.

The earliest date set out in Gray is March 21, 2003, the filing date. There is no reference in Gray to any earlier filed applications and thus it is submitted the earliest date attributable to Gray is March 21, 2003.

Applicant encloses a declaration of one of the inventors, Perry Philp, swearing behind the Gray reference pursuant to 37 C.F.R. 1.131. Attached as exhibits to the declaration of inventor Philp, are a series of electronic digital photographs of a prototype machine which Mr. Philp indicates was in existence prior to March 21, 2003. Also attached to Mr. Philp's declaration is a document entitled Summary of Invention which includes a description and drawings of a prototype machine, all of which are also stated to have been created prior to March 21, 2003.

Accordingly, it is respectfully submitted that in connection with claims 13 through 34, because of the earlier invention date based on the facts currently available in light of Gray, that the applicants of the current invention are the first inventors and that accordingly, Gray is no longer citable. Applicant has inserted new claims 46 through 67. Claims 46 through 67 correspond to claims 13 through 34 subject to the comments set out below.

Claim 13 as presented herewith is a claim to a ribbon for use in helical winding to make a product. Claim 46 presented herewith, is a claim directed to a helically wound

conduit comprising a ribbon with the features of the ribbon set out in the wording of the claim.

The Tuppin reference discloses a composite fabric in particular for hand luggage for clothes. There is no suggestion in Tuppin that the fabric used therein could usefully be used for making a helically wound conduit from a ribbon which includes a substrate and a net as more particularly set out in claim 46. Similarly, Gray discloses a reinforced fabric substrate and a method for making the same. There is nothing in Gray which would suggest that that product would usefully be used or is intended to be used in association with a substrate to comprise a ribbon, let alone that such substrate and net be used to make a helically wound conduit as defined in claim 46.

The examiner has stated that the invention of Tuppin is silent as to the use of spreader yarns. The spreader yarns as discussed more particularly in connection with the present application, are an important feature of the present invention. Given that Tuppin is silent on this point, it is respectfully submitted that Tuppin in and of itself is not relevant to either claim 13 or to claim 46.

The examiner has made certain comments in respect of the structures illustrated by Gray. In particular, the examiner has indicated that the examiner equates the outside warp yarn of Figure 6 of Gray to the instantly claimed spreader yarns. The examiner has stated that the illustration of Figure 6 is to show only part of the fabric substrate. The examiner has stated that the other side is a mirror image with the same loops 24.

It is respectfully submitted that notwithstanding the comments of the examiner, there is nothing whatever in Gray to indicate a net that can be used together with a substrate to create the product as more particularly defined in claim 46. As set out in claim 46, the spreader yarns define a spreader width and the substrate width is slightly larger than the spreader width. The spreader yarns as defined extend longitudinally adjacent the edges of the substrate. There is no similar language in Gray and in fact,

despite the examiner's comments, there is no clear indication as to so-called spreader yarns in Gray whatsoever.

The examiner's attention is respectfully drawn to the discussion of Gray and, it is respectfully submitted, that Gray must be read as a whole rather than dissected with a view to attempting to read any portions of Gray in the context of the present application.

The entire thrust of Gray is that the fabric is strengthened in particular areas as selected. That strengthening occurs as is shown most clearly in Figure 1 by providing more yarns in areas of desired strengthening. Gray starts his discussion of the fabric substrate illustrated in Figures 4 and following, at paragraph 28. In paragraph 30, Gray shows that there is an area of reinforcement. At paragraph 31, Gray indicates that the weft yarns 12 are continuous and are not cut along the edges of a fabric substrate 10 as shown in Gray's first embodiment. Gray indicates that the weft yarns form loops 24 and that that feature contributes to the stability and strength of the resulting fabric. However, as set out in paragraph 28, Gray describes the structure by indicating that the weft yarns 12 which extend laterally in Figures 4 and 5 are located between two convergent layers of parallel warp yarns 14 and 15. Figure 5 makes it clear that all of the warp yarns 14 are on top of the weft yarns 12, while all of the warp yarns 15 are below the weft yarns 12. Thus, as shown in Figure 4, the yarn 14 is above the weft yarns 12 and there is no indication of any yarn in Figure 4 or 5 which would serve the function of the spreader yarns as that term is used in the present application. It appears that the examiner is suggesting that the left hand most warp yarn in Figure 6 is serving that same function. However, it is submitted that there is absolutely no disclosure or support in Gray for what the function is of that left hand most warp yarn nor is there any explanation of how it is placed. It is noted that the numeral 14 is attached to a warp yarn which is clearly above all of the weft yarns 12. There are also weft yarns (not numbered) interspersed in Figure 6 between yarns 14 which, as illustrated, are below all of the weft yarns. There is simply no description whatsoever of the yarn shown at the left hand edge, nor is there any depiction of the corresponding yarn which may be at the right

hand edge. In view of the foregoing, it is respectfully submitted there is no enabling description in Gray of any yarn which would meet the current defined spreader yarn function, nor how to make such a cloth, nor what the effect of such a cloth might be.

As shown in Figure 6, it follows that if the examiner's comments were to be given more force, then what is shown in Figure 6 is a cut reinforcement net. Cutting the reinforcement net of the present application, would eliminate one of the spreader yarns so that the resulting product would not be within the definition of the conduit as set out in claim 46. Similarly, cutting the loops 24 from the right hand edge would then fail to meet the advantages stated in Gray.

In view of all of the foregoing, it is respectfully submitted that claim 46, and all claims dependent directly or indirectly thereon, patentably distinguish over any possible teaching of Gray or Tuppin, or any possible combination thereof. In summary, it is submitted that claims 46 through 67 patentably distinguish over the examiner's references and that claims 13 through 34 are patentable in light of the comments made above in respect of Tuppin and the affidavit of inventor Philp with respect to the Gray reference.

It is considered that this is fully responsive to the examiner's office action and presents the claims in allowable form.

In the enclosed Petition for Extension of Time, we have paid the necessary fees for an extension of time of two months to respond to the examiner's action.

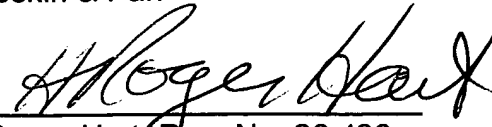
In view of the number of total claims cancelled and the additional claims added and in view of the number of independent claims cancelled and added, it is believed that no additional fees are required either for independent claims or in respect of the total number of claims.

Appln. No. 10/654,956
Amdt. dated June 8, 2006
Reply to Office action of January 11, 2006

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
Bereskin & Parr

By


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Encl.
Declaration of Perry Philp